

Board of Adjustment  
PO Box 120  
Town of Fremont, New Hampshire 03044  
Minutes of June 20, 2006

Members present: Chairman Rick Butler, Co-chairman Jack Baker, Doug Andrew, Scott Boisvert, and Secretary Meredith Bolduc.

Mr. Butler called the meeting to order at 7:45 p.m. then called the roll.

It was agreed to go directly to the scheduled Public Hearing and take care of any Board business when the Hearing was finished.

Case # 06-007  
Erin Michaud  
Map 2 Lot 156-1-21

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

Present: Owner Jim Michaud and representing Project Engineer, Paul Blanc of Jones & Beach Engineers, Inc.

Mr. Butler opened this Public Hearing at 7:45 pm. He explained the purpose of the Board and read the Public Notice of the Hearing which read as follows:

*In accordance with NH RSA 675: 7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on Tuesday June 20, 2006 at the Fremont Town Hall for Erin Michaud, Map 2 Lot 156-1-21, 55 Andreski Drive, Fremont NH.*

*The applicant is seeking Equitable Waivers of Dimensional Requirements to the terms of the following Articles as set forth in the Town of Fremont Zoning Ordinance:*

- 1. Article IX Section F-1 & F-2 for an existing waste disposal system (septic) located closer than one hundred (100') feet to a wetland and located within a watershed protection area*
- 2. Article IX Section F-4 for an existing house and shed located closer than one hundred (100') feet to a wetland/watershed protection area.*

Mr. Butler stated that the application included 6 sets of plans, proper check amount, list of abutters, letter of authorization, letter of denial from the Building Inspector, current abutters list, notice of April 13, 1992, case 92-3, ZBA Special Exception decision and the septic approval # 191800 for construction from NH Department of Water Supply & Pollution Control Division. In his May 31, 2006 letter of non-compliance, Building Official Thom Roy related that *"the proposal to keep the locations of an existing house and shed closer than one hundred (100') feet to a wetland watershed protection area is in non-compliance with Fremont Zoning Article IX Section F-4 "All dwellings, structures or parking areas shall have no portion within the Watershed Protection Area and/or no portion closer to Wetlands than those limits defined under Article IV as setback requirements"*.

ZBA 06-20-2006

*Additionally, if the existing septic system is closer than one hundred (100') to the wetland it would be in non-compliance with Fremont Zoning Article IX Section F-1 " No waste disposal system may be located closer than one hundred (100') feet to any wetland" and F-2 " No waste disposal system may be located within a watershed protection area."* It was agreed that the application was complete.

It was noted that this hearing was noticed in the June 9, 2006 edition of the Rockingham News and on June 6, 2006 at the Fremont Post Office and Fremont Town Hall. The applicant and all abutters were notified via certified mail on June 9, 2006 and all returns have been received.

Mr. Butler related that there is not a full Board present and gave the applicant the option of waiting for a full Board for a decision. Mr. Michaud opted to move forward with the members present.

Mr. Butler explained the procedure for an Equitable Waiver of Dimensional Requirements and the four points of criteria that must be met for an Equitable Waiver to be approved. He then read Article IX Sections F-1, F-2 and F-4 of the Fremont Zoning Ordinance.

Comment sheets were received from the following: (comments in italics)

1. Code Enforcement Officer: *I agree and support the requested waiver. It seems that a variance was originally sought which was properly acted upon. At this time a new definitive and more thorough presentation of the wetlands reflects the need for this waiver. The requested subdivision does not affect the need for this waiver. The waiver is required for existing conditions.*
2. Health Officer: *No problem.*
3. Fire Chief: *No comments.*

Mr. Blanc stated that the requests the Equitable Waivers are to allow the existing house, shed and septic to remain in their respective locations, all of which are closer than allowed to a wetlands/watershed protection area as a result of an unknown legitimate mistake." He stated that on April 13, 1992 the property received a Special Exception from the ZBA for the placement of the house. He added that the septic approval #191800 for construction from NH Department of Water Supply & Pollution Control Division has been in place since April 8, 1992 and that the 1992 plan used had erroneous wetland depiction. Mr. Blanc related that the violation was found in May of 2006 by RPC Circuit Rider David West as a result of a review of the recent engineered plan, which was done in preparation of a 2 lot subdivision of the property.

Mr. Michaud stated that he is currently before the Planning Board for the subdivision and that his Public Hearing has been continued to July 12, 2006 to allow time for him to resolve the zoning issues.

Mr. Blanc presented Plan # 05085 drawn by Jones & Beach Engineers, Inc. and dated October 26, 2005 with revision dates of March 15, April 20 and June 6, 2006. The plan showed the locations of the existing house with the closest point of eighty five (85) feet from wetlands so he is seeking a fifteen (15) foot waiver; the existing shed with the closest point of forty five (45) feet to the wetlands so he is seeking a fifty five (55) foot waiver; the septic system with the closest point of fifty four (54) feet to the wetlands so he is seeking a forty six (46) foot waiver.

Mr. Butler read the four points of criteria that must be met for an Equitable Waiver to be approved as well as *Article IX Sections F-1, F-2 and F-4* of the Fremont Zoning Ordinance.

Mr. Blanc addressed the four elements of an Equitable Waiver of Dimensional Requirements (in italics) and the Board voted as follows:

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value; *The house was built in 1992, but the placement error was not noticed until May 17, 2006 when the Fremont Building Official found it to be in non-compliance with the Fremont Zoning Ordinance due to the location of the new wetlands per NH Soils Consultants in December 2005.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Butler	Yes

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; *This was an honest error relative to the wetlands distance.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Butler	Yes

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; *The nonconformity does not diminish the value of other property. The wetlands in question are between the two proposed lots.*

Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Butler	Yes

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. *The cost of correction far outweighs any public benefit to be gained because there is not any public benefit to moving the existing septic and shed and house. The existing septic has state approval in April 8, 1992, approval # 191800.*

(e) Board's vote:

Mr. Baker	Yes
Mr. Andrew	Yes

Mr. Boisvert	Yes
Mr. Butler	Yes

During the review it was agreed to incorporate a minimal additional footage for setback to allow for a small margin of error. It was also agreed that, since a site visit was previously conducted, another one was not necessary. After careful consideration and review by the Board, Mr. Boisvert made the motion that, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver of Dimensional Requirements, the Fremont Zoning Board of Adjustment grant, with condition, the request of Erin Michaud, for property located at 55 Andreski Drive, Map 2 Lot 156-1-21, for Equitable Waivers of Dimensional Requirements from:

1. Article IX Sections F-1 & F-2, to allow an existing waste disposal system (septic) to remain in it's current location closer than one hundred (100') feet, but no closer than fifty (50) feet to a wetland and a watershed protection area;
2. Article IX Section F-4 to allow an existing shed to remain in its current location closer than one hundred (100') feet, but no closer than forty (40) feet to a wetland and watershed protection area.
3. Article IX Section F-4 to allow an existing house to remain in its current location closer than one hundred (100') feet, but no closer than seventy five (75) feet to a wetland and watershed protection area.

Condition:

1. That all Equitable Waivers granted herein pertain to the existing buildings and waste disposal system only and do not extend to any additional improvements of same.

Motion seconded by Mr. Baker with unanimous favorable vote.

Mr. Michaud was reminded that anyone party to the action has 30 days to appeal this decision. It was noted that the Notice of Decision will be duly recorded with the Rockingham Registrar of Deeds.

Mr. Boisvert made the motion to close this Public Hearing at 8:40 pm.

Motion seconded by Mr. Baker with unanimous favorable vote.

#### BUDGET

The Board received and reviewed the Expenditure Report issued as of June 1, 2006.

#### MINUTES

Mr. Baker made the motion to accept the May 23, 2006 meeting minutes as written.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

#### CORRESPONDENCE

1. Notice from US EPA of the 2006 State of the Estuaries Conference to be held at the Sheraton Harborside in Portsmouth on October 27, 2006.

Mr. Boisvert made the motion to adjourn at 8:50 pm.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, Clerk